

WN-16J

Ms. Joan Delabreau
Chairwoman, Menominee Tribe of Wisconsin
P.O. Box 910,
Keshena, Wisconsin 54135-0910

Dear Chairwoman Delabreau:

I am writing in response to your letter of January 23, 2017, regarding Aquila Resources' proposed Back Forty Project. In your letter you request that the U.S. Environmental Protection Agency require meaningful consultation between the State of Michigan and the Tribe regarding the proposed project. More specifically, you request that EPA require Michigan to enter into a programmatic agreement to resolve federal agency objections regarding the wetland permit required by section 404 of the Clean Water Act, and require a study, under Section 106 of the National Historic Preservation Act (NHPA), of traditional and cultural properties which would be impacted by the project.

In the case of the Back Forty Project, EPA does not have the authority to enter into such an agreement. Section 106 of the NHPA requires federal agencies to take into account the effects of their undertakings on historic properties, and afford the Advisory Council on Historic Preservation a reasonable opportunity to comment. As currently proposed, the Back Forty Project requires no federal undertaking because all of the permit decisions for the project required by federal law are the responsibility of the State of Michigan under federally approved state authorities covering the National Pollutant Discharge Elimination System (NPDES) permit program (Section 402 of the Clean Water Act (CWA), 33 U.S.C. 1342), the wetlands/dredge and fill permit program (Section 404 of the CWA, 33 U.S.C. 1344), and Title 1 of the Clean Air Act (42 U.S.C. 7475). In addition, Michigan maintains state authority to issue mining permits under Part 632 of its Natural Resources and Environmental Protection Act. Part 362 permits are not subject to federal oversight. Because the final permit decisions made under these authorities are state decisions, they are not subject to NHPA review.

While there is no basis for EPA to enter into an agreement with the State and Tribe pursuant to Section 106 of the NHPA, EPA would be agreeable to engaging in consultation with the tribe regarding its concerns with respect to the Back Fort Project. If you would be interested in pursuing consultation, please contact:

Christopher Korleski (W-15J)
Director, Water Division

U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois, 60604

I also note that EPA Region 5 has been contacted by a representative for the tribe to discuss tribal concerns regarding the Clean Water Act Section 404 permit. The Region is working to schedule a meeting with the tribe on this topic. Also, in response to your November 28, 2016 letter to Peter Swenson of EPA, Region 5, raising concerns with the Back Forty Project, the Region has been in contact with tribal staff about scheduling a meeting to better understand those concerns.

In your January 23, 2017 letter, you also request that EPA exercise its federal oversight over the permitting processes for the proposed project. EPA has been engaged with MDEQ on all three permits required by federal law:

Clean Air Act Permit: *Dino, can you please provide a short summary of our engagement and the permit status?*

Clean Water Act Section 402 Permit: *Krista, can you please provide a short summary of our engagement and the permit status?*

Clean Water Act Section 404 Permit: *Melanie, can you please provide a short summary of our engagement and the permit status?*

EPA will continue to exercise its oversight with respect to the Clean Water Act permits (I understand CAA is issued), and Region 5 staff would be happy to discuss concerns you have with these permits, as discussed above.

Thank you for your interest in this matter. If you have further questions, please contact_____

Sincerely,